

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

STATE OF TEXAS,

No. 4:24-cv-499-SDJ
(Lead Case)

PLANO CHAMBER OF COMMERCE, et al.,

No. 4:24-cv-468-SDJ

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
LABOR et al.,

Defendants.

CERTIFICATION OF ADMINISTRATIVE RECORD

I, Daniel Navarrete, Acting Director of the Division of Regulations, Legislation, and Interpretation of the Department of Labor's Wage and Hour Division, hereby certify that to the best of my knowledge and belief the materials listed below constitute a true, accurate, and complete list of the documents and authorities comprising the administrative record before the Wage and Hour Division in connection with the Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees rulemaking (Docket ID WHD-2023-0001), including (where applicable) the web address where each document may be accessed on the publicly available official rulemaking docket or other public website:

I. Documents in Docket ID WHD-2023-0001

1. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, Notice of Proposed Rulemaking,

published in the Federal Register on September 8, 2023, at 88 Fed. Reg. 62152, and also available at <https://www.regulations.gov/document/WHD-2023-0001-0001>

2. Response to Request to Extend the Comment Period; Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, published on October 10, 2023, <https://www.regulations.gov/document/WHD-2023-0001-1785>

3. Appendix (Exhibits A and B); Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, published on September 8, 2023, <https://www.regulations.gov/document/WHD-2023-0001-0006>

4. 100 Word Summary; Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, published on September 14, 2023, <https://www.regulations.gov/document/WHD-2023-0001-0099>

5. Report of the Minimum Wage Study Commission, Volume IV, Exemptions from the Fair Labor Standards Act: Outside Salesworkers and Executive, Administrative, and Professional Employees, by Conrad Fritsch, Senior Economist, Minimum Wage Study Commission, and Kathy Vandell, Research Assistant, Minimum Wage Study Commission (June 1981), <https://www.regulations.gov/document/WHD-2023-0001-0005>

6. Report and Recommendations on Proposed Revision of Regulations, Part 541, Under the Fair Labor Standards Act, by Harry S. Kantor, Assistant Administrator, Office of Regulations and Research, Wage and Hour and Public Contracts Divisions, U.S. Department of Labor (March 3, 1958), <https://www.regulations.gov/document/WHD-2023-0001-0002>

7. Report and Recommendations on Proposed Revisions of Regulations, Part 541, by Harry Weiss, Presiding Officer, Wage and Hour and Public Contracts Division, U.S. Department of Labor (June 30, 1949), <https://www.regulations.gov/document/WHD-2023-0001-0004>

8. “Executive, Administrative, Professional . . . Outside Salesman” Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition (Oct. 10, 1940), <https://www.regulations.gov/document/WHD-2023-0001-0003>

9. The approximately 33,300 comments received in response to the Notice of Proposed Rulemaking, during the September 8, 2023 to November 7, 2023 comment period, <https://www.regulations.gov/docket/WHD-2023-0001/comments>

10. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, Final Rule, published in the Federal Register on April 26, 2024 at 89 Fed. Reg. 32842, and also available at <https://www.regulations.gov/document/WHD-2023-0001-26291>

II. Cases

11. *Amusement & Music Operators Ass’n v. Copyright Royalty Tribunal*, 676 F.2d 1144 (7th Cir. 1982)

12. *Auer v. Robins*, 519 U.S. 452 (1997)

13. *Batterton v. Francis*, 432 U.S. 416 (1977)

14. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984)

15. *Donovan v. Burger King Corp.*, 672 F.2d 221 (1st Cir. 1982)

16. *Donovan v. Burger King Corp.*, 675 F.2d 516 (2d Cir. 1982)

17. *Davis Cnty. Solid Waste Mgmt. v. EPA*, 108 F.3d 1454 (D.C. Cir. 1997)

18. *Ellis v. J.R. 's Country Stores, Inc.*, 779 F.3d 1184 (10th Cir. 2015)
19. *Fanelli v. U.S. Gypsum Co.*, 141 F.2d 216 (2d Cir. 1944)
20. *Helix Energy Solutions Group, Inc. v. Hewitt*, 143 S. Ct. 677 (2023)
21. *Idaho Sheet Metal Works, Inc. v. Wirtz*, 383 U.S. 190 (1966)
22. *K-Mart Corp. v. Cartier*, 486 U.S. 281 (1988)
23. *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158 (2007)
24. *Mayfield v. U.S. Department of Labor*, No. 1:22-CV-792-RP, 2023 WL 6168251 (W.D. Tex. Sept. 20, 2023), *appeal docketed*, No. 23-50724 (5th Cir. Oct. 11, 2023)
25. *Nevada v. U.S. Department of Labor*, 218 F. Supp. 3d 520 (E.D. Tex. 2016)
26. *Nevada v. U.S. Department of Labor*, 275 F. Supp. 3d 795 (E.D. Tex. 2017)
27. *Walling v. Gen. Indus. Co.*, 330 U.S. 545 (1947)
28. *Walling v. Yeakley*, 140 F.2d 830 (10th Cir. 1944)
29. *Wirtz v. Miss. Publishers Corp.*, 364 F.2d 603 (5th Cir. 1966)

III. Executive Orders

30. Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, published in the Federal Register at 58 Fed. Reg. 51735
31. Executive Order 13132 of August 4, 1999, Federalism, published in the Federal Register at 64 Fed. Reg. 43255
32. Executive Order 13175 of November 6, 2000, Consultation and Coordination With Indian Tribal Governments, published in the Federal Register at 65 Fed. Reg. 67249
33. Executive Order 13563 of January 18, 2011, Improving Regulation and Regulatory Review, published in the Federal Register at 76 Fed. Reg. 3821

34. Executive Order 14094 of April 6, 2023, Modernizing Regulatory Review, published in the Federal Register at 88 Fed. Reg. 21879

IV. Federal Statutes and Related Materials

- 35. 2 U.S.C. § 1501 *et seq.*
- 36. 2 U.S.C. § 1532
- 37. 5 U.S.C. § 553
- 38. 5 U.S.C. § 601–612
- 39. 5 U.S.C. § 801
- 40. 29 U.S.C. § 203
- 41. 29 U.S.C. § 204
- 42. 29 U.S.C. § 206
- 43. 29 U.S.C. § 207
- 44. 29 U.S.C. § 213
- 45. 29 U.S.C. § 218
- 46. 44 U.S.C. § 3501
- 47. 44 U.S.C. § 3506
- 48. 44 U.S.C. § 3507
- 49. National Industrial Recovery Act, Pub. L. 73-67, 48 Stat. 195 (June 16, 1933)
- 50. Fair Labor Standards Act of 1938, Pub. L. 75-718, 52 Stat. 1060 (June 25, 1938)
- 51. An Act to Amend the Fair Labor Standards Act of 1938, as amended, to restrict its application in certain overseas areas, and for other purposes. Pub. L. 85-231, 71 Stat. 514 (Aug. 30, 1957)

52. Joint Resolution To approve the “Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Unions with the United States of America”, and for other purposes. Pub. L. 94-241, 90 Stat. 268 (Mar. 24, 1976)

53. Fair Labor Standards Amendments of 1989, Pub. L. 101-157, 103 Stat. 938 (Nov. 17, 1989)

54. An Act To eliminate “substantial documentary evidence” requirement for minimum wage determination in American Samoa and for other purposes, Pub. L. 101-583, 104 Stat. 2871 (Nov. 15, 1990)

55. Small Business Job Protection Act of 1996, Pub. L. 104-188, 110 Stat 1755 (Aug. 20, 1996)

56. U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-28, 121 Stat 112 (May 25, 2007)

57. Minimum Wage for American Samoa, Pub. L. 114-61, 129 Stat 545 (Oct. 7, 2015)

58. Puerto Rico Oversight, Management, and Economic Stability Act, Pub. L. 114-187, 130 Stat 549 (June 30, 2016)

V. Federal Regulatory Materials and Regulations

A. Department of Labor Rulemakings

59. Part 541. Regulations Defining and Delimiting the Terms “Any Employee Employed in a Bona Fide Executive, Administrative, Professional, or Local Retailing Capacity, or in the Capacity of Outside Salesman” Pursuant to Section 13(A)(1) of the Fair Labor Standards Act, 3 Fed. Reg. 2518 (Oct. 20, 1938)

60. Part 541—Defining and Delimiting the Terms “Any Employee Employed in a Bona Fide Executive, Administrative, Professional, or Local Retailing Capacity, or in the Capacity of Outside Salesman,” 5 Fed. Reg. 4077 (Oct. 15, 1940)

61. Part 541—Defining and Delimiting the Terms “Any Employee Employed in a Bona Fide Executive, Administrative, Professional, or Local Retailing Capacity, or in the Capacity of Outside Salesman,” 14 Fed. Reg. 7705 (Dec. 24, 1949)

62. Employees Employed in Bona Fide Executive, Administrative, Professional or Local Retailing Capacity, or in Capacity of Outside Salesman, Special Provision for Motion Picture Producing Industry, 18 Fed. Reg. 2881 (May 19, 1953)

63. Part 541—Defining and Delimiting the Terms “Any Employee Employed in a Bona Fide Executive, Administrative, Professional, or Local Retailing Capacity, or in the Capacity of Outside Salesman,” Compensation “on a salary basis,” 19 Fed. Reg. 4405 (July 17, 1954)

64. Part 541—Defining and Delimiting the Terms “Any Employee Employed in a Bona Fide Executive, Administrative, Professional, or Local Retailing Capacity, or in the Capacity of Outside Salesman,” Miscellaneous Amendments, 23 Fed. Reg. 8962 (Nov. 18, 1958)

65. Part 541—Defining and Delimiting the Terms “Any Employee Employed in a Bona Fide Executive, Administrative, Professional, or Local Retailing Capacity, or in the Capacity of Outside Salesman,” Miscellaneous Amendments, 26 Fed. Reg. 8635 (Sept. 15, 1961)

66. Executive, Administrative and Professional Exemptions, Tentative Decision on Proposed Rule Making Proceedings, 28 Fed. Reg. 7002 (July 9, 1963)

67. Part 541—Defining and Delimiting the Terms “Any Employee Employed in a Bona Fide Executive, Administrative, Professional, or Local Retailing Capacity, or in the Capacity of Outside Salesman,” 28 Fed. Reg. 9505 (Aug. 30, 1963)

68. Part 541—Defining and Delimiting the Terms “Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity (Including Any Employed in the Capacity of Academic Administrative Personnel or Teacher in Elementary or Secondary Schools), or in the Capacity of Outside Salesman,” Academic Administrative Personnel or Teacher, 32 Fed. Reg. 7823 (May 30, 1967)

69. Executive, Administrative and Professional Exemptions, Notice of Proposed Rule Making, 34 Fed. Reg. 9934 (June 24, 1969)

70. Part 541—Defining and Delimiting the Terms “Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity (Including Any Employed in the Capacity of Academic Administrative Personnel or Teacher in Elementary or Secondary Schools), or in the Capacity of Outside Salesman,” Executive, Administrative, and Professional Exemptions, 35 Fed. Reg. 883 (Jan. 22, 1970)

71. Part 541—Defining and Delimiting the Terms “Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity (Including Any Employed in the Capacity of Academic Administrative Personnel or Teacher in Elementary or Secondary Schools), or in the Capacity of Outside Salesman,” 38 Fed. Reg. 11390 (May 7, 1973)

72. Part 541—Defining and Delimiting the Terms “Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity (Including Any Employed in the Capacity of Academic Administrative Personnel or Teacher in Elementary or Secondary

Schools), or in the Capacity of Outside Salesman,” Labor Standards, 40 Fed. Reg. 7091 (Feb. 19, 1975)

73. Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act; Public Sector Employers, 57 Fed. Reg. 37677 (Aug. 19, 1992)

74. Defining and Delimiting the Terms “Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity (Including any Employee Employed in the Capacity of Academic Administrative Personnel or Teacher in Elementary or Secondary Schools), or in the Capacity of Outside Salesman,” 57 Fed. Reg. 46744 (Oct. 9, 1992)

75. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, Proposed Rule and Request for Comments, 68 Fed. Reg. 15560 (Mar. 31, 2003)

76. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, Final Rule, 69 Fed. Reg. 22122 (April 23, 2004)

77. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, Proposed rule and request for comments, 80 Fed. Reg. 38543 (July 6, 2015)

78. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Announcement of Time-Limited Non-Enforcement Policy for Providers of Medicaid-Funded Services for Individuals With Intellectual or Developmental Disabilities in Residential Homes and Facilities With 15 or Fewer Beds, 81 Fed. Reg. 32390 (May 23, 2016)

79. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, Final Rule, 81 Fed. Reg. 32391 (May 23, 2016)

80. Request for Information; Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, 82 Fed. Reg. 34618 (July 26, 2017)

81. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, Proposed rule and request for comments, 84 Fed. Reg. 10900 (March 22, 2019)

82. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, Final Rule, 84 Fed. Reg. 51230 (Sept. 27, 2019)

83. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees, Notice of Proposed Rulemaking, 88 Fed. Reg. 62152 (Sept. 8, 2023)

B. Other Agency Rulemakings

84. Enhancing Airline Passenger Protections, Final Rule, 76 Fed. Reg. 23110 (Apr. 25, 2011)

85. William D. Ford Federal Direct Loan Program, Final regulations, 79 Fed. Reg. 63317 (Oct. 23, 2014)

86. Small Business Size Standards: Adoption of 2022 North American Industry Classification System for Size Standards, Final Rule, 87 Fed. Reg. 59240 (Sept. 29, 2022)

87. Small Business Lending Under the Equal Credit Opportunity Act (Regulation B),
Final Rule, 88 Fed. Reg. 35150 (May 31, 2023)

C. Code of Federal Regulations

- 88. 5 CFR 1320.8
- 89. 29 CFR 516.2
- 90. 29 CFR 516.3
- 91. 29 CFR 541.3
- 92. 29 CFR 541.100
- 93. 29 CFR 541.200
- 94. 29 CFR 541.204
- 95. 29 CFR 541.300
- 96. 29 CFR 541.303
- 97. 29 CFR 541.304
- 98. 29 CFR 541.400
- 99. 29 CFR 541.500
- 100. 29 CFR 541.600
- 101. 29 CFR 541.601
- 102. 29 CFR 541.602
- 103. 29 CFR 541.604
- 104. 29 CFR 541.605
- 105. 29 CFR 541.709
- 106. 29 CFR 778.113
- 107. 29 CFR 778.114

VI. Other Documents¹

A. Documents Available on a U.S. Government Website

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115. Fact Sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act, <https://www.dol.gov/agencies/whd/fact-sheets/21-flsa-recordkeeping>
116. Federal Depository Insurance Corporation (2018), Quarterly Financial Reports- Statistics On Depository Institutions (SDI), <https://www.fdic.gov/foia/ris/id-sdi/index.html>. Data are from 12/31/17
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121. U.S. Bureau of Labor Statistics Current Population Survey, Employment status of the civilian noninstitutional population, 1953 to date, <https://www.bls.gov/cps/cpsaat01.htm>
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125. U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics 2022, <https://www.bls.gov/oes/2022/may/oes131141.htm>
126. U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics 2022, <https://www.bls.gov/oes/2022/may/oes110000.htm>
127. U.S. Bureau of Labor Statistics, Occupational Employment and Wage Statistics, Technical Notes for May 2023 OEWS Estimates, https://www.bls.gov/oes/current/oes_tec.htm
128. U.S. Census Bureau, 2017 Census of Governments – Organization, <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>
129. U.S. Census Bureau, Census of Governments 2017, <https://www.census.gov/programs-surveys/cog.html>
130. U.S. Census Bureau, Changes to 2022 CPS Public Use Microdata Files (revised January 14, 2022), <https://www.census.gov/content/dam/Census/programs-surveys/cps/updated-2022-cps-puf-changes.pdf>
131. U.S. Census Bureau, County Business Patterns (CBP), About this Program, <https://www.census.gov/programs-surveys/cbp/about.html>
132. U.S. Census Bureau, Industry and Occupation Code Lists and Crosswalks, <https://www.census.gov/topics/employment/industry-occupation/guidance/code-lists.html>

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B. Documents Not Available on a U.S. Government Website²

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Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed: July 8, 2024.

**DANIEL
NAVARRETE**

Daniel Navarrete

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